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FILED
Superior Court of California
County of Los Angeles

SEP 25 2017

Sherri R. Carter, Executive Officer/Clerk
By Nancy Alvarez Deputy

Attorneys for Defendants, SILVERWOOD PROPERTIES, INC. and KENNETH HOWARD SHAPIRO

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

11 DAVID A. GLAZER, an individual,

12 Plaintiff,

13 vs.

14 CHENEY ADRIENNE SHAPIRO; CHENEY
15 SHAPIRO DESIGNS 401K; CHENEY SHAPIRO
16 DESIGNS; RESOURCEFUL DEVELOPMENTS,
17 INC.; RICHARD JUDSON WILLIAMS;
18 SILVERWOOD PROPERTIES, INC.; KENNETH
19 HOWARD SHAPIRO; PODLEY ASSOCIATES
20 REALTORS; LINDA DARLINGTON SEYFFERT;
SEISMIC SAFETY, INC.; EDUMUND J. SYLVIS;
KEN LAMARR COMPTON; AND DOES 1
THROUGH 250.

21 Defendants.

Case No.: BC669741

Complaint Filed: July 25, 2017

Assigned to Honorable Richard E. Rico
Dept.: 17

**NOTICE OF MOTION AND MOTION
OF DEFENDANTS SILVERWOOD
PROPERTIES, INC. AND KENNETH
HOWARD SHAPIRO TO STRIKE ALL
ALLEGATIONS PERTAINING TO
PLAINTIFF'S ENTITLEMENT TO
PUNITIVE DAMAGES**

DATE: October 23, 2017

TIME: 8:30 a.m.

DEPT: 17

Reservation No.: 170922253266

TO ALL PARTIES AND THEIR ATTORNEY OF RECORD:

24 **PLEASE TAKE NOTICE** that on October 23, 2017 at 8:30 a.m., or as soon thereafter as
25 counsel may be heard in Department 17 of the above-entitled Court located at 111 N. Hill Street,
26 Los Angeles, CA 90012, Defendants SILVERWOOD PROPERTIES, INC. ("SILVERWOOD") and
27 KENNETH HOWARD SHAPIRO ("SHAPIRO," who with SILVERWOOD, the Moving Parties"),
28 will and hereby do move to strike the following portions of Plaintiff's Complaint:

1 **Second Cause of Action, Page 14, Paragraph 61:**

- 2 1. 61. *In failing to disclose, actively concealing and making misrepresentations to*
3 *Plaintiff, the Defendants acted fraudulently, willfully and oppressive, with knowledge*
4 *that Plaintiff would rely upon the Defendants' misrepresentations. As a consequence*
5 *thereof, Plaintiff is entitled to punitive damages in an amount to be proved at trial—*
6 *which will be sufficient to punish the Defendants.*

7 **Third Cause of Action, Page 15, Paragraph 72:**

- 8 2. 72. *In failing to disclose, actively concealing and making misrepresentations to*
9 *Plaintiff, the Defendants acted fraudulently, willfully and oppressive, with knowledge*
10 *that Plaintiff would rely upon the Defendants' misrepresentations. As a consequence*
11 *thereof, Plaintiff is entitled to punitive damages in an amount to be proved at trial—*
12 *which will be sufficient to punish the Defendants.*

13 **Prayer For Relief, Page 31:**

14 AS TO THE THIRD AND NINTH CAUSES OF ACTION

- 15 3. *For punitive damages allowed by law; (As against Moving Parties)*

16 This Motion is made pursuant to California Code of Civil Procedure, Sections 435 and 436.

17 This Motion will be made on the grounds that the above specified portions of the Complaint
18 constitute an improper matter. This Motion will be made on further grounds that the items to be
19 stricken are irrelevant, false, improper or otherwise not filed in conformity with the laws of the State
20 of California.

21 The Motion is based upon this Notice and Motion and Motion, the Memorandum of Points and
22 Authorities, all papers and pleadings on file herein, and upon such other oral and/or further material
23 and argument as may be presented at the hearing on the Motion to Strike.

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1 Dated: September 22, 2017

CARLSON LAW GROUP, INC.

2
3 By:



4 Mark C. Carlson, Esq.

5 Warren K. Miller, Esq., Of Counsel

6 Attorneys for Defendants, SILVERWOOD

7 PROPERTIES, INC. and KENNETH HOWARD
8 SHAPIRO

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09/26/2017

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I. INTRODUCTION

3 This case arises out of the purchase and sale of 6257 Pine Crest Drive, Los Angeles, California
4 90042 (the "Subject Property") by Plaintiff David A. Glazer ("Plaintiff") from the Defendant Chaney
5 Shapiro ("Seller"), the escrow for which closed in 2014. Moving Parties represented the Seller as
6 Listing Agent and Broker in the sale of the Subject Property. Following taking possession of the
7 Subject Property, Plaintiff discovered certain defects which he alleges were not disclosed to him
8 during the transaction. As a result, Plaintiff filed suit against the Seller, Moving Parties and others.

9 II. ARGUMENT AND AUTHORITY

10 A. STANDARD OF REVIEW.

11 Code of Civil Procedure section 435 subdivision (b)(1) provides that "[a]ny party within the
12 time allowed to respond to a pleading, may serve and file a notice of motion to strike the whole or
13 any party thereto." Allegations or parts of causes of action for which there is no basis in law may be
14 stricken from a cause of action. [*Grieves v. Superior Court*, 157 Cal.App.3d 159, 163-164 (1984)
15 (punitive damages claims may be so stricken); *Eldorado Bank v. Lytle* (1983) 147 Cal.App.3d Supp.
16 17, 22 (motion to strike may be made against a demand for attorney's fees where their recovery is not
17 authorized by statute or agreement).] A motion to strike shall be granted if "any part of any pleading is
18 not drawn or filed in conformity with the laws of this state, a court rule or an order of the court."
19 [Code Civ. Proc., § 436, subd. (b).]

20 B. THE COMPLAINT FAILS TO PROPERLY ALLEGE PUNITIVE AND
21 EXEMPLARY DAMAGES AS TO SILVERWOOD

22 Corporations are legal entities which do not have minds capable of recklessness, wickedness,
23 or intent to injure or deceive; therefore, an award of punitive damages against a corporation must rest
24 on the malice of the corporation's employees. [*Cruz v. HomeBase* (2000) 83 Cal.App.4th 160, 167.]
25 However, the law does not impute every employee's malice to the corporation; instead, the punitive
26 damage statute requires proof of malice among corporate leaders: the "officer[s], director[s], or
27 managing agent [s]." [Civ. Code, § 3294, subd. (b).] By so confining liability, the statute avoids
28 punishing the corporation for malice of low-level employees which does not reflect the corporate

1 “state of mind” or the intentions of corporate leaders. [*Cruz, supra*, 83 Cal.App.4th at 167; *see also*
2 *College Hospital, Inc. v. Superior Court* (1994) 8 Cal.4th 704, 726 (for ratification sufficient to justify
3 punitive damages against corporation, there must be proof that officers, directors, or managing agents
4 had actual knowledge of the malicious conduct and its outrageous character).]

5 Here, Plaintiff has failed to allege any facts whatsoever that any “officer, director, or managing
6 agent” of Moving Party, SILVERWOOD, engaged in any conduct sufficient to justify an award of
7 punitive damages against the corporation. Moreover, Plaintiff has failed to allege any facts
8 whatsoever that any officer, director, or managing agent had actual knowledge of the malicious
9 conduct and its outrageous character. Consequently, Plaintiff’s request for punitive damages against
10 Moving Party, SILVERWOOD, must be stricken from the Complaint.

11 SILVERWOOD respectfully submits that the Complaint fails to set forth specific facts
12 which would attribute any malicious conduct on behalf of SILVERWOOD’S employee and whether
13 the employee was an officer, director, and/or managing agent of SILVERWOOD. As a result,
14 Plaintiff’s allegations of entitlement to punitive damages against SILVERWOOD must be stricken.

15 **C. THE COMPLAINT FAILS TO PROPERLY ALLEGE THEIR**
16 **ENTITLEMENT TO PUNITIVE AND EXEMPLARY DAMAGES AS TO SHAPIRO**

17 It is well-settled that language which simply characterizes the defendant’s conduct as
18 “malicious” is insufficient to support a request for punitive damages and is subject to a motion to
19 strike. [*G.D. Searle & Co. v. Superior Court*, (1975) 49 Cal.App.3d 22, 30.] And, “a breach of
20 fiduciary duty alone without malice, fraud or oppression does not permit an award of punitive
21 damages.” [*Delos v. Farmers Group* (1979) 93 Cal.App.3d 642, 656-657; *Flyer’s Body Shop v. Ticor*
22 *Title* (1986) 185 Cal.App.3d 1149, 1154.] Stated otherwise, “something more than the mere
23 commission of a tort is always required for punitive damages....” [*Taylor v. Superior Court* (1979) 24
24 Cal.3d 890, 894-895.] To establish malice, it is not sufficient to show only that the defendant’s
25 conduct was negligent, grossly negligent or even reckless. [*G. D. Searle & Co, supra*, 49 Cal.App.3d
26 at 31-32.] That is, the mere carelessness or ignorance of the defendant does not justify the imposition
27 of punitive damages, but instead, what is required is “conduct that rises to such a level of extreme
28 indifference that decent citizens should not tolerate it.” [*Hughes v. Blue Cross* (1989) 215 Cal. App.3d

1 832, 847.]

2 In *Smith v. Superior Court* (1992) 10 Cal.App.4th 1033, 1042, the plaintiff claimed entitlement
3 to punitive damages based on the defendants' failure to adequately represent her and her property
4 interests in a dissolution proceeding alleging, *inter alia*:

5 "[D]efendants...misrepresented and fraudulently concealed the true nature
6 of the representation being afforded by...defendants and that plaintiff's legal
7 interests and rights were being protected, when in fact, they were not. The
8 defendants' conduct...was intentional, knowing, malicious, fraudulent, false
9 and deceitful. Said acts and omissions were undertaken with a conscious and
10 knowing disregard of the interests and rights of plaintiff and to benefit the
defendants...financially, and were part and parcel of a scheme and plan to
defraud plaintiff. Defendants' conduct...was thus such as to constitute
oppression, fraud or malice...."

11 [*Id.* at 1036.] The Court held that these allegations were conclusory as a matter of law and properly
12 had the request for punitive damages stricken from the complaint. [*Id.* at 1042; *see also Brousseau*
13 *v. Jarrett* (1977) 73 Cal.App.3d 864, 872 (holding complaint's conclusory characterization of
14 defendant conduct as intentional, willful and fraudulent was a patently insufficient statement of
15 "oppression, fraud, or malice, express or implied" within meaning of section 3294).]

16 Here, Plaintiff simply parrot the "buzz words" of Civil Code section 3294 and characterize the
17 alleged conduct of Moving Party, SHAPIRO as "fraudulently, willfully and oppressive." This is
18 insufficient for purposes of the punitive damages statute. Consequently, Plaintiff's request for
19 punitive damages against Moving Party, SHAPIRO, must be stricken from the Complaint, as
20 detailed in the Notice of Motion.

21 **III. CONCLUSION**

22 For the foregoing reasons, Moving Parties respectfully request that the Court grant their
23 Motion and strike those portions in the Complaint, as outlined in the Notice of Motion. In addition,
24 should Plaintiff fail to demonstrate in their Opposition to this Motion to Strike, if any, the ability to
25 cure the defects set out, *supra*, in a First Amended Complaint, the Motion to Strike should be
26 sustained *without leave to amend*. (*Titus v. Canyon Lake Property Owners Assn.* (2004) 118
27 Cal.App.4th 906.

28 ///

1 Dated: September 22, 2017

CARLSON LAW GROUP, INC.

2
3 By:



4 Mark C. Carlson, Esq.
5 Warren K. Miller, Esq., Of Counsel
6 Attorneys for Defendants, SILVERWOOD
7 PROPERTIES, INC. and KENNETH HOWARD
8 SHAPIRO
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1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

3 I am employed in the County of Los Angeles, State of California. I am over the age of 18 and
4 not a party to the within action; my present address is: 21031 Ventura Boulevard, Suite 1100,
5 Woodland Hills, California 91364.

6 On September 22, 2017, I served the foregoing document described as **NOTICE OF**
7 **MOTION AND MOTION OF DEFENDANTS SILVERWOOD PROPERTIES, INC. AND**
8 **KENNETH HOWARD SHAPIRO TO STRIKE ALL ALLEGATIONS PERTAINING TO**
9 **PLAINTIFF'S ENTITLEMENT TO PUNITIVE DAMAGES** on the parties by placing a true
10 copy thereof enclosed in a sealed envelope addressed as follows:

11 **SEE ATTACHED SERVICE LIST**


12 **XX** BY MAIL as follows: I am "readily familiar" with the firm's practice of collection and
13 processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal
14 Service on that same day with postage thereon fully prepaid at Woodland Hills, California in the
15 ordinary course of business.

16 BY OVERNIGHT EXPRESS DELIVERY. I deposited it in a box or other facility
17 regularly maintained by GOLDEN STATE OVERNIGHT/FEDERAL EXPRESS, or delivered it to a
18 driver or courier authorized by GOLDEN STATE OVERNIGHT/FEDERAL EXPRESS to receive
19 documents, in an envelope designated by GOLDEN STATE OVERNIGHT/FEDERAL EXPRESS,
20 with deliver fees provided for, and with delivery requested for the next business day.

21 BY FACSIMILE TRANSMISSION, by use of facsimile machine telephone number
22 (818) 884-4285, in accordance with Code of Civil Procedure §1013(e) and California Rules of Court
23 2.306, to the within parties at the facsimile number(s) indicated. The fax machine I used complied
24 with Rule 2.301 and this transmission was reported as complete and without error. Under Rule 2.304,
25 I caused the machine to print a transmission record of the transmission report which was issued by the
26 transmitting facsimile machine, a copy of which is attached to the original thereof.

27 Executed on September 22, 2017, at Woodland Hills, California.

28 **XX** (State) I declare under penalty of perjury under the laws of the State of California that
the above is true and correct.

29 
Karon Rudolph

1 David A. Glazer v. Cheney Adrienne Shapiro, et al.

2 LASC Case No.: BC669741

3 Ronald A. Hartmann, Esq.

4 Kurt E. Kananen, Esq.

5 **HARTMANN & KANANEN**

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12 *Attorneys for Plaintiff DAVID A. GLAZER*

13 Timothy R. Lee, Esq.

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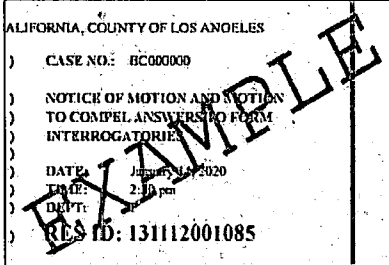
18 Facsimile: (310) 826-2696

19 E-Mail: Timothy R. Lee <trleelaw@hotmail.com>

20 *Attorneys for Plaintiff DAVID A. GLAZER*

09/26/2017

THIS IS YOUR CRS RECEIPT

INSTRUCTIONS	
Please print this receipt and attach it to the corresponding motion/document as the last page. Indicate the Reservation ID on the motion/document face page (see example). The document will not be accepted without this receipt page and the Reservation ID.	
	

RESERVATION INFORMATION

Reservation ID: **170922253266**
Transaction Date: September 22, 2017
Case Number: BC669741
Case Title: DAVID A GLAZER VS CHENEY ADRIENNE SHAPIRO ET AL
Party: SILVERWOOD PROPERTIES INC (Defendant/Respondent)
Courthouse: Stanley Mosk Courthouse
Department: 17
Reservation Type: Motion to Strike (not anti-SLAPP) - without Demurrer
Date: 10/23/2017
Time: 08:30 am

FEE INFORMATION (Fees are non-refundable)

First Paper Fee: (See below)

Description	Fee
First Paper (Unlimited Civil)	\$435.00
Total Fees:	Receipt Number: 1170922K8728 \$435.00

PAYMENT INFORMATION

Name on Credit Card: Mark Carlson
Credit Card Number: XXXX-XXXX-XXXX-2740

A COPY OF THIS RECEIPT MUST BE ATTACHED TO THE CORRESPONDING
MOTION/DOCUMENT AS THE LAST PAGE AND THE RESERVATION ID INDICATED ON THE
MOTION/DOCUMENT FACE PAGE.

09/26/2017